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Coordinating Civil Procedure with Legal Research and Writing: A Field Experiment

Joseph W. Glannon, Terry Jean Seligmann,
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Many legal educators have tried coordinating the teaching of legal research and writing with various first-year courses.¹ In this article we report on a yearlong collaboration in teaching LRW and Civil Procedure. During the fall semester we used Civil Procedure topics—specifically, diversity and personal jurisdiction issues arising out of a medical malpractice case—for LRW assignments, and a combination of simulation and demonstration exercises based on that case. In the spring semester the students wrote LRW briefs on motions to dismiss and motions for summary judgment in a second case; at the same time, they were studying these motions and related discovery issues in Civil Procedure.

In our roles as Civil Procedure and LRW teachers, we had different agendas in deciding to coordinate our courses. But our differing agendas proved quite compatible. The combination of the two courses turned out to be more than the sum of the parts. All four of us came away from the experience firmly convinced that the collaboration had paid dividends to both teachers and students.

The authors are colleagues at Suffolk University. **Joseph W. Glannon** is Professor of Law; **Terry Jean Seligmann** and **Medb Mahony Sichko** are Legal Practice Skills Instructors; **Linda Sandstrom Simard** is Associate Professor of Law. The Suffolk course described in this article is formally titled Legal Practice Skills but, following the conventions of the literature, we refer to it as Legal Research and Writing, or LRW.

1. From telephone interviews and from responses to a posting on the Internet, we learned that, at several law schools with separate legal writing programs, LRW is formally paired with another first-year course such as Torts or Contracts. These include Detroit Mercy (Contracts), Chapman (Torts), Maryland, Santa Clara, and Willamette. Even where no formal tie exists, many LRW teachers try to assign topics they know are part of the first-year curriculum. At a few schools, including Yale, Iowa, and Pace, students get their legal writing training as part of a topical course taught by regular faculty. See Michelle S. Simon, *Teaching Writing Through Substance: The Integration of Legal Writing with All Deliberate Speed*, 42 DePaul L. Rev. 619 (1992).

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Goals and Rationale

The Civil Procedure Teachers' Perspective

Our own experience has been that we learn most effectively when we are forced to find answers for ourselves, either to address issues in practice or—especially—in preparing to teach others. As active learners, we develop a learning agenda, decide what materials are relevant, do the appropriate research, and create a product—a brief, a class plan, an article—based on those efforts. It seems pretty clear to us that this active engagement in the learning process produces more effective learning for the time invested, better retention of information, and greater enjoyment as well.

By contrast, first-year law students are typically passive learners. They do not participate in setting their learning agenda. They read materials assigned by the teacher, little understanding why they are reading those particular materials. Usually their limited readings, even supplemented with class discussion, leave them with no sense that they have resolved any legal issue, have examined all relevant authorities, or have appreciated how one issue relates to other issues or to actual client problems.

Wouldn't it make more sense, we wondered, to have students learn Civil Procedure (or Torts, or any other subject) through a more proactive set of assignments? The teacher could pose legal problems to the students in the context of a client's case and let *the students* determine what they needed to learn to resolve the problem, find the appropriate sources, and analyze how the law would apply to the facts. The course could be taught through a series of eight to twelve such problems in various important doctrinal areas. The teacher could use class time to give the students an analytical framework for the problems, guide their research, help them separate the relevant from the irrelevant, and assist them in using the authorities they have found to write effective memoranda explaining the law and applying it to the problem.

This may well be the ideal approach to teaching law students, but it presents two obvious problems. First, it would take a great deal of the students' time. There is a world of difference between reading the usual personal jurisdiction fare in a first-year casebook and doing original research, even in one jurisdiction, on the meaning of minimum contacts. If we implemented the proactive approach, the students would have to put in much more time on our course than on their other first-year subjects, and we would be unpopular both with our students and with our colleagues.²

Second, the problem approach would take a great deal of teacher time: we would need to provide the students continuous feedback on their analysis and writing. We weren't sure we were ready to grade—and comment on—eight to twelve sets of legal memoranda from fifty to ninety students.

But it occurred to us that we could come close to the ideal pedagogy if we coordinated Civil Procedure with the LRW course and its required research and writing. By using Civil Procedure problems in LRW, we could accomplish

2. Requiring written, researched responses could also increase demands on the school's library and computer resources.

several goals. First, students would gain a sense of how procedure issues actually arise in practice, as opposed to the post-hoc manner in which they are posed in casebooks and discussed in class. Second, the students could get actively involved in evaluating problems, choosing research methods and goals, and applying procedural concepts to new fact situations. Third, they would simply learn more about the procedural issues used in the LRW assignments, since their research and writing in those areas would complement the more abstract discussion in procedure class.

With these goals in mind, we approached our LRW teachers about a possible collaboration. Ultimately the collaboration developed well beyond the fairly narrow goal that had led to us to propose it. But our fundamental purpose was to promote active engagement of the students in studying procedure concepts through a problem-oriented approach to learning.

The LRW Teachers' Perspective

As LRW teachers, we believed that collaboration with Civil Procedure could serve several goals of our course. First, we hoped that if students wrote on topics they were studying in Civil Procedure, they would understand the legal standards better, and their memoranda would reach a more sophisticated level of analysis. If the students had already studied the underlying doctrine in Civil Procedure, we reasoned, their efforts in the LRW course could be directed less toward mastering and accurately expressing the basic legal standard and more toward writing memoranda that effectively explained the case law and applied it to the facts of the problem.

Second, we hoped that we could spend more of our class time on analytical development and writing issues and less time on cases and doctrine. Students can't work effectively on their legal writing if they are floundering in trying to understand the applicable law.

The third goal was to provide students with a more meaningful context for development of research and writing skills.³ Students frequently complain about the time spent on LRW assignments, often for few credits. Only after they clerk in a law firm or agency do they recognize that their work as a young lawyer is primarily LRW. We believed that providing students more context for their LRW assignments would help them appreciate the practical benefits of the course and encourage them to engage in the work more enthusiastically.

LRW assignments do provide this sense of context to some extent. Students assume the role of a law firm associate analyzing a problem or an advocate arguing in the trial court. But assignments are seldom presented in the context of an actual case: students research and argue an isolated issue based on a short fact pattern, without understanding why the issue might be important to a client. Similarly, while LRW assignments often require students to brief a motion for dismissal or for summary judgment, the students seldom have enough context to appreciate the impact that the procedural posture of the motion has on their substantive argument.

3. The provision of a context for legal learning is often cited as a reason to introduce simulations and skills-related demonstrations into the legal curriculum. See Jay M. Feinman, *Simulations: An Introduction*, 45 *J. Legal Educ.* 469, 471-72 (1995).

For example, in drafting a brief on either side of a summary judgment motion, students often argue whatever factual inferences favor their side, without realizing that the judge must draw all reasonable inferences against the moving party on summary judgment. Or they will argue that the party *opposing* summary judgment is entitled to judgment as a matter of law, rather than taking the (probably) more defensible position that questions of fact are posed which foreclose summary judgment for the moving party. In judging upper-level advocacy competitions, we have seen many student advocates make such mistakes. We hoped that coordinating the teaching of these motions with their application in writing LRW briefs would help students appreciate the impact of procedural posture on effective legal argument.

The Joint Curriculum

The Fall Semester

At the outset of the project, we all agreed that the success of our collaboration would depend upon a significant amount of planning before the semester got started. We had to make sure that all students in our Civil Procedure classes were assigned to the LRW sections involved in the collaboration and vice versa, since it would be unfair to grade a student who had not been part of the collaboration on the same scale as students who had. We also had to schedule the Civil Procedure classes during the same hour so we could hold joint classes for simulations. Further, each procedure teacher had to be paired with an LRW teacher, so that all students assigned to the one teacher had the other as well.

Second, we had to coordinate our Civil Procedure syllabi with the assignments in LRW. Our school's LRW program resembles many two-semester programs. Students write two objective office memoranda in the fall, and one persuasive brief with a rewrite in the spring. The first assignment focuses on case analysis skills and application of a straightforward legal standard to new facts. The second, open-research assignment, is created by the LRW teachers individually, as is the spring brief project, which tends to demand more sophisticated research and analysis. Each student also participates in two oral arguments during the year.

We settled on two topics for the students' fall memos—domicile and minimum contacts jurisdiction—which would meet the objectives of LRW while emphasizing issues taught concurrently in Civil Procedure. This coordination required some compromises. On occasion the LRW teachers had to change their deadlines for memos, or the Civil Procedure teachers had to rearrange topics in the syllabus in order to cover the joint topics at the right time. Overall, this did not pose a significant problem.

The first topic covered in Civil Procedure was subject-matter jurisdiction. We began with the issue of citizenship for purposes of diversity jurisdiction. The students read four cases that explored the issue of individual citizenship based on domicile.

During this period, the students were assigned their first LRW memo, based on a domicile issue from a simulated case involving one Joe Hardy, born

and raised in Massachusetts, who aspired to play for the Boston Red Sox and had played for the farm team in Pawtucket, Rhode Island, for three seasons. He rented a house in Pawtucket with several other players during the season, but returned to Massachusetts during the off season. Hardy broke his leg while coaching a vacation baseball clinic on Martha's Vineyard, in Massachusetts. When complications set in, Martha's Vineyard Hospital sent him to Providence Hospital in Rhode Island. Hardy later sued Dr. Earl Graves, who had allegedly set the leg negligently at Martha's Vineyard Hospital. At the time suit was brought, Hardy was residing in a Rhode Island rehabilitation facility and was uncertain about his plans. The students were asked to write a memorandum analyzing whether Hardy was domiciled in Massachusetts or Rhode Island, in order to determine whether he could file suit against Dr. Graves (a Massachusetts citizen) in federal court.

To introduce the case to the students, we held a client interview in class. One Civil Procedure teacher and one LRW teacher interviewed Hardy to obtain the information necessary to analyze his domicile. We notified the students before the interview that they should be prepared to ask Hardy questions about the domicile issue. The interviewers purposely did not elicit all of the relevant facts relating to domicile. Then the students asked additional questions that they felt were necessary to understand the issue.

After the interview, the students prepared a statement of facts for their LRW memos, using the facts obtained during the interview.⁴ They based their memoranda on the four domicile cases discussed in Civil Procedure.

After they turned in the domicile assignment, we held an oral argument in the school's moot courtroom on a motion to dismiss Hardy's federal suit for lack of subject-matter jurisdiction. The Civil Procedure teachers served as counsel for Hardy and Graves, and the LRW teachers served as judges. After the argument we discussed advocacy styles, the process of arguing and dealing with questions, and the substance of the issue.

By the time the students had completed their domicile memos, the Civil Procedure classes had moved on to personal jurisdiction, and in LRW the students were learning legal research methods. The second assignment in LRW was to research and write a memo on whether a Rhode Island court could exercise personal jurisdiction over Dr. Graves and Martha's Vineyard Hospital. The LRW teachers provided students with Hardy's complaint, the hospital's motion to dismiss for lack of personal jurisdiction, and supporting affidavits. These materials showed that Dr. Graves's treatment at the hospital might have caused complications to Hardy's leg, that he had ordered continuation of this treatment when Hardy was transferred to Rhode Island, and that

4. The LRW teachers later handed out a statement of facts which all students were to use in their full memoranda. We debated whether to do this, rather than requiring the students to rely on their own notes from the in-class interview. On the one hand, we thought it was realistic to require the students to get the facts by paying attention and taking notes. On the other hand, since their notes might not be comprehensive or accurate, it made sense for LRW purposes to give the students a memorandum clearly summarizing the facts obtained at the interview.

he had confirmed these orders on the phone when called from the Rhode Island hospital.

While the Civil Procedure classes focused on the Supreme Court's personal jurisdiction case law, the students had to research Rhode Island precedents for their memos. To assist them in applying general minimum contacts law to Hardy's case, each procedure teacher attended an LRW class and discussed the personal jurisdiction standard in the specific context of Rhode Island precedents.

After the research memoranda were handed in, we held a second oral argument. This time, the LRW teachers argued the motion to dismiss for lack of personal jurisdiction. A federal judge, William Young, presided. Afterwards he offered comments both on effective oral argument and on the merits of the motion.

The Hardy facts were derived from a real case. Toward the end of the semester, the lawyers who had litigated the case attended an LRW class to discuss the strategy and the politics. The actual case had been tried on Martha's Vineyard, against two of the island's five doctors. Moreover, at that time Massachusetts employed the "locality standard" for malpractice claims, which complicated the problem of proving the plaintiff's case in such a tight-knit community. This discussion illustrated for the students the important role that jurisdictional issues may play in planning litigation strategy.

The Spring Semester

In the spring we introduced students to pleadings and pretrial motions in Civil Procedure and used problems in LRW which illustrated those motions. For administrative reasons the two LRW teachers used different problems, but both involved the issue of an employer's respondeat superior liability for an employee's sexual misconduct.

One of the problems had a young girl suing a private school for sexual misconduct by her chemistry teacher (the *Lovely* case). It was set in Oregon, where courts still use a fairly traditional three-part test for scope of employment. The other problem was set in California, which applies a more flexible test for vicarious liability of employers. The plaintiff in the California problem (the *Rafte* case) was a businessman who sought counseling to deal with his grief following the death of his wife. After the counseling ended, he became sexually involved with his therapist but later brought suit against the counseling center that employed her. In both cases, the memos dealt with the question whether sexual misconduct could be within the "scope of employment" so as to make the employer vicariously liable.

Early in the semester, the Civil Procedure classes focused on the elements of a complaint, and then on answers and motions to dismiss for failure to state a claim. At the same time, the LRW teachers introduced their spring problems by giving the students a complaint and a responsive motion to dismiss. The first LRW assignment was to write a memo in support of or in opposition to the motion to dismiss. So the students were actually addressing the adequacy of a complaint and the mechanics of Rule 12(b)(6) motions in LRW while studying pleadings and motions in Civil Procedure.

After the students had briefed the motion to dismiss, we held joint arguments on the motions, using student volunteers on each of the two problems. Then the LRW teachers issued a ruling denying the motions to dismiss. This set the stage for studying discovery. The Civil Procedure classes turned to methods of discovery, relevance, work product, and privilege. In the LRW classes, students discussed the information they would like to obtain and what methods of discovery they would use.

To get that information, we conducted in-class depositions in both cases during Civil Procedure. The LRW teachers, as plaintiff's attorneys, deposed the witnesses while the Civil Procedure teachers represented the deponents.⁵ In *Rafte*, the deponent was the therapist who allegedly had engaged in sexual misconduct with the plaintiff. In *Lovely*, the director of the defendant academy was deposed. When the deposition in the *Lovely* case concluded, the students asked to continue deposing the witness; they clearly enjoyed the chance to elicit information from the deponent themselves. In both depositions, counsel raised and discussed objections to relevance and form, as well as the problem of obtaining potentially privileged information (such as the treatment records of the therapist's other clients in *Rafte*).⁶

Following the in-class depositions, the LRW teachers distributed transcripts of the depositions and other discovery materials, including affidavits and answers to interrogatories. These materials set up the discussion of summary judgment in Civil Procedure and the second LRW memo, which addressed summary judgment motions in the two scope-of-employment cases. In LRW the students revised their memos on the 12(b)(6) motion to address the standard for summary judgment and to reflect the facts gleaned through discovery. At the same time, the Civil Procedure teachers used the scope-of-employment cases to illustrate the distinction between Rule 12(b)(6) and summary judgment motions. The LRW teachers also held miniclasses with groups of four or five students to help them understand the difference that the Rule 56 context would make in crafting their legal arguments. These classes focused on applying the Rule 56 standard to the particular case: Were the material facts really undisputed? What is a material fact? How did the advocate's legal theory determine which facts are "material"? How far need the party opposing summary judgment go in order to defeat the motion?

Assessment of the Collaboration

The Student Response

Near the end, we asked the students to evaluate the collaboration. They answered open-ended questions about what they liked most and least. They completed the forms during an LRW class. Sixty-eight of about eighty-five students responded. All were positive about the coordination of the courses.

5. The depositions were not entirely spontaneous. Since we wanted to be sure of eliciting certain information, we prepared the testimony quite closely ahead of time.
6. The authors will be pleased to provide copies of the materials we used to any readers who want them.

When asked what aspects they liked most, students consistently mentioned the deeper understanding they felt they had gained of Civil Procedure topics by applying them to their LRW assignments. Typical comments: "It gave us a tangible way to grasp principles of procedure as well as a means to articulate our understanding of them in a legal fashion." "I have a much better grasp of Civil Procedure than any other class." Students also liked bringing the legal concepts of Civil Procedure to bear in a practical setting: "It provides the students with an opportunity to see how Civil Procedure concepts function in a mock 'real' world." "Great combination of theoretical abstraction with practical application." "The spring case was especially good in developing practical attorney skills in a real-life situation."

Students also noted that using topics they had studied in Civil Procedure made their memoranda easier to write: "I was more able to focus on my writing in LRW." A number of students noted the value of the client interview, the oral argument demonstrations, and the deposition. "These were well worth the effort to develop, organize, and schedule."

Asked what aspects they liked least, thirty-four said "none" or left the entry blank. Of those who commented, most suggested that on occasion there was not enough coordination of the timing between Civil Procedure topics and their use in LRW projects. A few thought working on the same case through the semester was dull. A few commented on confusion in some instances where their procedure and LRW teachers seemed to give conflicting analysis of a particular legal issue.

We also asked for suggestions on improving the program. Students said the coordination should continue. Several suggested that such coordination be done in all sections: "I just can't believe that the two courses were not taught like this the whole time." "All LRW sections should be integrated as this one was with another class to facilitate analytical skills and an understanding of the law in that area." One student wrote: "I have spoken to students in other schools who have particular difficulty understanding Civil Procedure. I feel a step ahead of these students. Although I griped to myself and other students about the time constraints, the tedious research that never appeared to go anywhere productive, and the time taken away from other studies, I have no suggestions. In retrospect, I believe those frustrations which I had are benefits to me now. I do suggest that *every* student get this opportunity. Thanks for the practical experience!"

The Civil Procedure Teachers' Assessment

We found that the collaboration enhanced our students' experience in the Civil Procedure course. In the fall, the students were more actively involved in class discussion of the two procedural issues that they were using in their LRW assignments. This may be because they wanted to do well on their LRW memos, and not because they were intellectually fascinated with domicile or minimum contacts, but it still served the purpose. Their engagement was evident in the various in-class simulations. In the client interview, for example, students asked many good questions on the facts relevant to Joe Hardy's domicile. Similarly, when we addressed these concepts through the material

in the casebook, the students seemed more attentive, asked more perceptive questions, and were anxious to relate the discussion to the *Hardy* case.

The students also gained a lot from the oral arguments on the issues they had studied in LRW. While it may have been odd to see their teachers act like real lawyers, the students were also witnessing effective, subtle application of procedure concepts to a case they knew well. Because they had studied the *Hardy* case in detail, they understood the problems with Hardy's claim that he was diverse from the defendant, and they could appreciate the close analysis of the domicile issue engaged in by the bench and the counsel for the parties. At the second argument, they not only witnessed a strong argument of the minimum contacts issue, but watched a fine federal judge actually hear argument on a procedural motion and then comment candidly on both motion practice and the merits of the motion. These activities helped the students to appreciate how procedure concepts arise and are litigated in actual cases, and showed the importance of facts in the application of the abstract concepts studied in Civil Procedure.

Perhaps the most effective part of the collaboration, from our viewpoint, was the use of LRW assignments to contrast the Rule 12(b)(6) motion for failure to state a claim with the Rule 56 motion for summary judgment. It is one thing to tell students, as we do, that the court in ruling on a 12(b)(6) motion must "take all the inferences in the light most favorable to the plaintiff," or that the factual allegations in a complaint must be taken as true on such a motion. It is quite another to take an actual complaint alleging vicarious liability for an employee's intentional tort, to research the underlying requirements for vicarious liability in such cases, and then to argue a motion challenging the legal sufficiency of specific allegations in a complaint. The first provides a theoretical framework for understanding the motion, which is certainly necessary. The second provides a practical appreciation of the constraints on arguing such a motion, and the importance of factual nuances to the outcome.

Here is a specific example of this point. In the problems involving an employer's vicarious liability for a sexual assault by a therapist or a teacher, the complaints drafted by the LRW teachers contained specific allegations about the employee's conduct, such as the time, place, and nature of the alleged sexual contacts. But they also alleged—not surprisingly—that the employee had "acted within the scope of employment."

We had told our students, of course, that on a motion to dismiss, the factual allegations of the complaint are deemed admitted. But the complaints they were challenging contained specific allegations about the defendant's conduct as well as the more general allegation that the defendant had "acted in the scope of employment." How, then, were they to treat the general allegation? If they had to accept it as true, the motion was doomed, since the employer *could* be held liable if the employee had acted in the scope of the employment. On the other hand, if they could look at the more specific facts alleged, and argue that they contradicted the more general allegation of scope of employment, they could still challenge the complaint.

Students struggled with this problem, as did the four teachers. Indeed, we did not completely agree on the effect of the general allegation. This led to an interesting debate among us about the treatment of general and specific allegations under Rule 12(b)(6)—an issue we obviously had not fully appreciated before. Some students were clearly uncomfortable with the ambiguity. But in grappling with these ambiguities the students really did get down to cases in a way that a more traditional, abstract discussion of these motions would not have required.

The analysis of the motion in Civil Procedure and its use in the LRW assignment operated symbiotically to provide a much richer appreciation for this procedural device. Because the students had to come to grips in detail with the 12(b)(6) standard to craft their LRW memos, they also had very pointed questions for us in Civil Procedure.

The development of a discovery record in the scope-of-employment cases also enhanced the students' understanding of Civil Procedure. The transcript of the depositions (after some judicious editing) became part of the record on which the students relied for their summary judgment memos. This hands-on example of the way facts are developed through discovery helped the students distinguish the role of the summary judgment motion from that of the Rule 12(b)(6) motion, and to appreciate how the summary judgment record gets developed. In addition, the privilege objections and argument that we slipped into the simulated depositions provided a nice counterpoint to the discussion of privileges in procedure class.

The collaboration also seemed to improve some students' exam performance. The best exams were comparable to the best exams in prior years, but the weakest exams were better than the weakest exams in other years. Working with the concepts in a concrete factual setting and writing about procedural issues appeared to help students who may have been struggling with these concepts.

The LRW Teachers' Assessment

Our view that the use of concepts studied in Civil Procedure would make the students better able to focus on analysis in writing their memoranda was confirmed in the first memorandum on domicile. Students showed a greater confidence in setting up the test for domicile than we had seen before. They were more likely to *use* precedent effectively to illustrate and support their argument. They also applied case law more effectively to the client's case, rather than simply citing it in support of an abstract legal rule. Their greater facility with the use of precedent seemed to flow directly from their greater understanding of the doctrine after discussion in Civil Procedure.

On the personal jurisdiction research problem, most students set up their analysis in a logical sequence that addressed general jurisdiction and specific jurisdiction appropriately and then broke the specific jurisdiction analysis into an appropriate three-part inquiry based on the cases. Again, many students showed an understanding of the constitutional analysis and could apply that analysis effectively to the facts of the case.

The LRW teachers who collaborated in this project each had a third section of LRW composed of evening students. One of the sections had Civil Procedure with one of the collaborating procedure teachers; the other did not. Although these evening sections were not part of the collaboration, they wrote their fall and spring research memoranda on the same topics; in a sense, they constituted a control group for the writing aspects of the collaboration.

In the section that did not have the collaborating procedure teacher, the evening students had significantly more difficulty in establishing the overall framework for the personal jurisdiction analysis. Their Civil Procedure class had not yet reached personal jurisdiction when the memorandum was first assigned, although it did before the final draft was due. Although they read the same cases as their collaborating counterparts, and were assigned the same chapters on the topic,⁷ the LRW teacher in that section ended up giving more class time and conference time to the basic framework for analysis than she did with her day students. Overall, those evening students' first drafts showed less clarity in setting out the analytical structure of general and specific jurisdiction, and in addressing the components of the specific jurisdiction analysis. By contrast, the evening section that had the benefit of the collaborating procedure teacher (even though collaboration was fortuitous) did not differ markedly in performance from the day students for whom the collaboration was planned.

From our perspective, the greatest achievement of the spring collaboration was the understanding that students developed of the functioning of summary judgment standards in writing and arguing their summary judgment memoranda. In previous years, LRW teachers had sometimes skipped over the procedural posture of the motion entirely, simply directing students to argue the merits of the legal issue on the basis of the fact pattern. When we had asked students to argue the standard for the summary judgment motion in their advocacy memoranda, they usually produced a paragraph of canned language on the motion standard, followed by a vigorous argument on the merits of one side or the other of the case. Their memos showed no understanding of such procedural subtleties as the effect of taking inferences favorably to the plaintiff or the difference between resolving a legal question and a factual one on summary judgment.

In contrast, when we had students brief a motion to dismiss and then a summary judgment motion, and supplied them with a real discovery record (the deposition transcript, interrogatory responses, and affidavits), they were forced to frame their merits arguments under the applicable procedural standard and support them from the record before the court. For example, the complaint in one of the problems alleged that the defendant had "stroked and hugged" the plaintiff during therapy sessions. In her deposition, however, the therapist testified that she had merely patted the plaintiff on the hand or back once or twice. The plaintiff's affidavit did not provide any testimony on this issue. After class discussion, students understood that the plaintiff, in

7. Joseph W. Glannon, *Civil Procedure: Examples and Explanations*, 2d ed., chs. 1–2 (Boston, 1992).

opposing summary judgment, could not rely on the allegation in his complaint to establish that fact or to show a dispute of material fact. Unlike the situation on the motion to dismiss, where the “hugging and stroking” allegation was deemed admitted, the therapist’s undisputed testimony on the subject placed the case in a very different posture and required students to frame their arguments accordingly.

The memoranda and arguments on summary judgment reflected—for the first time—a real grasp of the interactions between the standard, the record, and the legal issues for decision. With the benefit of the collaboration, the students understood that the 12(b)(6) motion looks only to the facts alleged in the complaint, whereas at the summary judgment stage the focus is on whether evidence adduced through discovery creates triable issues of material fact. Similarly, the use of a case record forced the students to consider which discovery materials were relevant to the summary judgment motion. For example, the discovery materials included information relating to damages, which was irrelevant to the issue before the court on the summary judgment motion.

We also believe that the demonstration arguments enhanced the teaching of oral advocacy in the LRW course. As attorneys, we know how helpful watching others argue motions has been in our own professional development. Certainly students can observe oral arguments by attending court sessions, watching moot court competitions, or having demonstration arguments in the LRW course.⁸ But watching the argument of the domicile issue on which they had written their objective memoranda not only modeled presentation technique, it also showed how a solidly constructed argument could be made for both sides of the issue. Students always want to know which is the “right” answer. While we tell them that it is the analysis that counts, not which way they come out, they usually don’t believe us. The sight of two Civil Procedure teachers persuasively arguing for opposing conclusions brought home the point.

The second demonstration—at the end of the fall semester, after the students had their first oral arguments—had other benefits. In their first arguments, before the LRW teachers, the students had delivered set arguments and handled a few gentle questions. When Judge Young called the same case for argument by the LRW teachers, things did not proceed quite so predictably. He began by attempting to press the parties to settlement. The subsequent argument featured rapid-fire questions to the advocates based on the judge’s concerns about the issue, with little opportunity for counsel to return to their planned argument. The exercise illustrated the need for counsel to react to the judge’s concerns in oral argument, and doubtless made the students feel better about their own grilling in oral argument. By the second semester, students could look forward to—or at least anticipate—being questioned rather than giving their presentation uninterrupted.

8. One of us assigns students to observe and critique an appellate argument in state court before the students’ first oral advocacy exercise. All the students like this assignment and find it builds their own confidence in their abilities to present oral arguments.

When we began considering this collaboration, some LRW teachers felt that using Civil Procedure topics for the fall writing assignments would be boring to the students—or to the LRW teachers, who must read and grade sixty to seventy memos on each assignment. Torts or Criminal Law was seen as having more appeal. But we found that issues like domicile and personal jurisdiction, while not very racy in the abstract, became meaningful to the students when they recognized the impact these issues could have on a client's options in an actual (or simulated) case. Students grapple more effectively with an abstract issue like domicile, jurisdiction, or procedural standards when it may spell the end of a case they have come to identify with.

While the collaboration was generally successful, we do have some suggestions for improvement. For example, we would set the spring problems in federal court, so that all sections would be working with the Federal Rules of Civil Procedure instead of the state rules. On a larger scale, while the collaboration was exciting for the teachers and for the more talented students, some weaker students reported that the assignments were confusing and the problems very hard, especially the personal jurisdiction problem. A student who was repeating the LRW course said that this course was “much harder” than the course she had taken the year before. (In a questionnaire, paradoxically, all of these students said that LRW had helped them understand Civil Procedure.) The personal jurisdiction memo posed the additional problem that the body of case precedent was large, so that we had to limit the number of cases students could use. Perhaps we should have given a first research memo on a narrower jurisdictional topic, so that students could have had a more realistic research experience.

In the spring semester, the tort law involved did not appear to confuse anyone, but a number of students (again, the weaker ones) had difficulty understanding the procedural distinction between the motion to dismiss for failure to state a cause of action and the motion for summary judgment. Some LRW teachers believe that procedural issues should not be taught until students have developed facility with substantive legal analysis. But both of us felt that the time spent helping students to understand these procedural issues was well spent.

The Effect of the Collaboration on Our Experience as Teachers

Each of us came to this project with enthusiasm about its value for our respective courses and with willingness to spend extra time planning and implementing it. We were not disappointed. The collaboration did involve extra work for all of us. The Civil Procedure teachers reordered their syllabi, worked to keep their classes on schedule, and added a unit on discovery issues. They commandeered several extra class hours from the LRW teachers to cover this extra material. They also helped to develop in-class simulations and the first oral argument demonstration.

The LRW teachers developed new problems for each of the major writing assignments to meet the goals of the collaboration. They created pleadings and discovery records, including deposition transcripts, in lieu of a fact pattern memorandum. In the spring, they changed from a single memoran-

dum with a rewrite to successive memos on a motion to dismiss and a motion for summary judgment. The group conferences before the summary judgment memo added sixteen to twenty hours of work to the typical load. The LRW teachers also sat in on Civil Procedure classes that addressed the issues used in LRW to assure consistency. The procedure teachers likewise attended a number of LRW classes on joint issues.

The four of us began meeting and planning the project in the preceding February and met regularly through that spring and summer to plan for the collaboration. Happily, we found the process stimulating and productive. We wasted little time during our meetings; work was done promptly and communication flowed well. There was a real peer relationship among the participants, based on mutual respect and shared goals for the students. No one pulled rank.

We all feel that the stimulation we gained from trying something new and interesting was well worth the extra time spent. Like the students, we found ourselves more engaged in our work because we were doing something different and adding extra dimensions to our courses. We also had some interesting substantive discussions as we developed the problems and the procedural vehicles for presenting them. The regular interaction with our colleagues provided a welcome infusion of new perspectives and energy into tasks we too often undertake in relative isolation.

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We have no doubt that every student would benefit from this kind of coordinated first-year program. Any school with a separate LRW course, a yearlong Civil Procedure course, and willing teachers could offer this kind of program to all first-year students if LRW and Civil Procedure sections were matched administratively. Although we believe Civil Procedure provides a natural fit, a combination of LRW with Torts, Property, Criminal Law, or Contracts might also work well.

Any such program would probably be ineffective, however, if faculty were required to participate in it. The enthusiasm that all four of us brought to our experiment was absolutely critical to its success, and it seems doubtful that enthusiasm can be legislated. A required program would likely be uneven, depending on the commitment of individual participants. It could also give rise to tensions between LRW teachers and some reluctant collaborators.⁹ But a voluntary collaboration promises solid benefits for both students and teachers.

9. An informal inquiry of LRW teachers through an Internet discussion list produced both positive reports on voluntary experiences and concerns about mandated coordination. The positive reports seemed to parallel our own. Concerns about mandatory coordination included doctrinal teachers' reluctance to modify syllabi or keep to the syllabus, their lack of interest in LRW, and the dangers to academic freedom if someone other than the teacher dictated the syllabus.